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IN THE

Supreme Court of the United States

No. 931

Term, 19....

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Appellants,

vs.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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Appellees.

On Appeal from the Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Pennsylvania entered on September 29, 1965, affirming a decree of the Court of Common Pleas of Alle-

gheny County, Pennsylvania, and respectfully submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinions Below

The opinions of the Supreme Court of Pennsylvania is reported at 213 Atlantic Reporter (2d) p. 80 and at 415 Pa. 28. The opinions of the Court of Common Pleas are not reported. Copies of all said opinions are attached hereto as Appendices A, B, C and D, respectively.

Jurisdiction

This suit was brought to open and set aside a *pro forma* decree merging local Pennsylvania church corporations, both by their charters affiliated with the Serbian Eastern Orthodox Diocese for the United States and Canada, an Illinois corporation, after the plaintiffs, appellants herein, obtained Diocesan recognition of their local church's continued separate existence as St. Sava Serbian Eastern Orthodox Church, in their hierarchical appeal from the action of their local officers in obtaining the merger decree. Consent to bring the action was given appellants by the Diocesan Bishop. After hearing, the Common Pleas Court entered a non-suit. On March 6, 1964, several weeks after entry of the order of non-suit, said Court entered of record an opinion holding appellants guilty of laches in failing to appeal from the *pro forma* merger decree, and that the Diocese had no legal authority to seek opening of the merger decree. Appeal was immediately taken to the Supreme Court of Pennsylvania at No. 110 March Term, 1964, reported at 415 Pa. 28, which said appeal was quashed as premature. Upon remand motion to remove the compulsory non-suit was filed in the Common Pleas

Court, argument held, and the motion denied by an opinion and order dated December 15, 1964, holding that the appeal to the Pennsylvania Supreme Court, having been a "nullity", the time for filing the motion to remove the non-suit (4 days under local court rule) had passed, and that said motion to open must be stricken as untimely. Appeal was then taken to the Pennsylvania Supreme Court at 94 March Term, 1965, wherein, on September 29, 1965, the affirmance judgment here appealed was entered. Notice of appeal herein was filed with the Pennsylvania Supreme Court on December 9, 1965. Jurisdiction of the Supreme Court to review by direct appeal is conferred by Title 28, United States Code, Sections 1257, (1) (2) and 2101 (c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Young v. Ragen,* 337 U. S. 235; *W. U. Tel. Co. v. Commw. of Penna.,* 368 U. S. 71; *Cramp v. Bd. of Public Instruction of Orange County, Fla.,* 368 U. S. 278; *Raley v. State of Ohio,* 360 U. S. 423; *Local 333 B United Marine Div. of Intern. Longshoremen's Ass'n. v. Battle,* 342 U. S. 880; *Lovell v. City of Griffin, Ga.,* 303 U. S. 444; and *Chamberlin v. Dade County Bd. of Public Instr.,* 377 U. S. 402.

Questions Presented

(a) Should a state court enforce a hierarchical administrative church order requiring opening of a decree merging two local church corporations affiliated with the diocesan hierarchy, members of one of which said corporations successfully appealed from the merger action taken over their objection, to said diocesan hierarchy, but filed no adversary court proceedings prior to the merger?

Denied below.

(b) Where a local Pennsylvania church corporation, by the terms of its corporate charter is required to comply with the regulations, rulings and orders of the Serbian Eastern Orthodox Diocese for the United States and Canada, an Illinois corporation, are members who dissent from the majority voting to merge with a similiar local corporation, likewise affiliated, required to oppose the *pro forma* court application for a merger decree before appealing successfully to the church national assembly, so that the delay during such appeal bars their right to open the merger decree?

Affirmed below.

(c) May a discretionary state court rule of procedure be invoked for refusing to honor a hierarchical church order to dismember a local church corporation, to re-establish theretofore existing congregations, when none of the members and neither of the local church corporations disaffiliates from the hierarchy?

Affirmed below.

Provisions of the United States Constitution Involved

The Establishment and Free Exercise of Religions Clauses of the First Amendment to the Constitution, as made applicable to the States by the Fourteenth Amendment, forbidding States to handicap religious orders, as interpreted and applied in *Everson v. Board of Education*, 330 U. S. 1; *School Dist. of Abington Twp., Pa. v. Schempp*, 374 U. S. 215; *Saint Nicholas Cathedral v. Kreshik*, 363 U. S. 190, and *Watson v. Jones*, 80 U. S. 679.

Statement

The appellants are members of St. Sava Serbian Eastern Orthodox Church which, by its Pennsylvania corporate

church charter provisions, affiliates it with the national Diocese at Libertyville, Illinois, under the national Bishopric thereof. The appellees were members of St. George Serbian Eastern Orthodox Church, likewise affiliated.

In 1961, an unofficial "unity committee", not provided for in the by-laws of either local church corporation, was voluntarily set up "to discuss" the merits of merger, within the Diocese.

Without formal or hierarchical approval, the "unity committee" called for a vote for merger. Ballots were printed and distributed by mail and in person. The meeting was under domination of a violent chairman and his aggressive group. Receiving a majority of favorable ballots, the "unity committee" representatives and their counsel proceeded with a non-profit corporate merger application in the Common Pleas Court of Allegheny County, Pennsylvania.

Appellants appealed the unauthorized, unofficial and violent actions of the "unity committee" to their priest, their president, the church board, the Bishop and ultimately to the Church National Assembly, which, by official action in August, 1963, upheld them, and declared the merger proceedings void.

Pending the intra-church appeals as aforesaid, the appellees had obtained a *pro forma* merger decree, which, as amended, declares in paragraph 6-A, that the consolidated corporation, under the name Holy Trinity Serbian Eastern Orthodox Church-School Congregation of Pittsburgh, Pennsylvania, is bound:

> "1. To maintain and conduct the worship of God in conformity with the faith, doctrine and usage of the Serbian Eastern Orthodox Church, under the jurisdiction of the Serbian Eastern Orthodox Diocese for the United States of America and Can-

> ada, and subject to all the Articles of its constitution, the canons of the Church, and other decrees and directives of the Diocesan authorities at the head of which is the Bishop; * * *"

In sustaining the appeal of the appellants, the National Assembly was presided over by the Bishop, who likewise decreed the merger action by the "unity committee" a nullity.

This equity action came on for trial before Common Pleas Judge Robert Van der Voort, who after hearing the entire case, entered a compulsory non-suit, over the objection, and despite the motion of counsel for appellants for leave to file requests for fiindings of fact and conclusions of law. The Chancellor's opinion was filed after appeal, upon notice, under Rule 63 of the Pennsylvania Supreme Court.

The first appeal to the Pennsylvania Supreme Court, taken by these appellants, at No. 110 March Term, 1964, from the *entry* of a compulsory non-suit, was, on motion, quashed as being "prematurely taken"; *Kukich v. Serbian Eastern Orth. Church,* 415 Pa. 28, holding that a motion to remove the non-suit below was a prerequisite to appeal. Upon remand, such a motion forthwith filed. A rule was granted appellees by the same Common Pleas Judge requiring appellants to show cause why the motion should not be dismissed for laches, and, after argument upon said rule and answer thereto, the said judge dismissed the motion for laches, without considering the substantive merits thereof, and without passing on the federal questions involved.

The record will show that the first appeal was filed December 20, 1963, the date that the order granting the non-suit was orally made by the Court below (r. 308a). The

appeal was quashed Wednesday, July 1, 1964. On Monday, July 6, 1964, the motion to remove the non-suit was filed below, the 3rd court day after the order quashing the previous appeal.

A second appeal to the Pennsylvania Supreme Court at No. 94 March Term, 1965, very clearly raising the federal questions as the principal part of the appellants' brief. The Supreme Court entered a one line judgment: "Decree affirmed. Each side to bear own costs." None of the federal questions were thus determined.

The motion to open the non-suit had set out, *inter alia,* the illegality of the court's decree refusing to honor the hierarchical autonomy of the Diocese, its duly constituted Bishop and their official canonical determination of the separate existence of the St. Sava congregation. It was pointed out that interference in the internal affairs of a church was violative of the Constitution as applied to the States. It was also pointed out that the *pro forma* merger decree, entered in a non-adversary proceeding, was not such "final judgment" as to warrant refusal to open after delay due to exhaustion of church remedies resorted to by appellants. All these questions were ignored both in the Common Pleas and in the Supreme Court.

The Federal Questions Involved are Substantial

The Pennslyvania Courts have ignored the holding of *Kedroff v. St. Nicholas Cathedral,* 344 U. S. 94; *Kreshik v. St. Nicholas Cathedral,* 363 U. S. 190; *Watson v. Jones,* 80 U. S. 679; *Chamberlin v. Dade County Bd. of Public Instr.,* 377 U. S. 402, etc., adhering to a determination that the Diocesan hierarchy's decision upholding appellants cannot be recognized, and is not enforceable in the state courts.

Especially since the *pro forma* decree of merger, unless opened, will deprive appellants of substantial church property, including their church building and cemetery, contrary to the constitutional and decisional mandates supporting ecclesiastical autonomy, should jurisdiction be assumed by the Supreme Court.

The refusal of the Pennsylvania courts to acknowledge the independence of the church to administer its own canonical affairs, including recognition of its own affiliates in a manner provided for in the church charters, by ignoring the federal question put to them, evades the Constitution and the law.

By the device of enforcing technical local court rules requiring appeal from a *pro forma* decree, and "timely" motion to remove non-suit, the Pennsylvania courts have ignored the requirements of exhaustion of remedy within the church, and its authority to decide the merits of the appellants' claims, which conflict of authority between the church and state should be resolved by application of the overriding Federal constitutional and decisional law.

Unless the Supreme Court assumes jurisdiction, the Federal rights of appellants and their church will not be recognized in Pennsylvania.

Conclusion

WHEREFORE, it is respectfully submitted that substantial and important Federal questions are involved which should be reviewed by the Supreme Court.

Respectfully submitted,

HARRY ALAN SHERMAN,
Counsel for Appellants.

APPENDICES

Appendix A

SUPREME COURT OF PENNSYLVANIA

Sept. 29, 1965.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, JOSEPH WERLINICH, RADE MILKOVICH, JOVE ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,
Appellants,

v.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH and NICHOLAS R. STONE.

Appeal No. 94 March Term, 1965 from the Decree of December 20, 1963, of the Court of Common Pleas of Allegheny County at No. 3690 October Term, 1962, Non-Suiting the Cause; Robert Van der Voort, Judge.

Harry Alan Sherman, Pittsburgh, for appellants.

Robert Rade Stone, George Raynovich, Jr., Pittsburgh, for appellees.

Before Bell, C. J., and Musmanno, Jones, Cohen, Eagen, O'Brien, and Roberts, JJ.

Per Curiam.

Decree affirmed. Each side to bear own costs.

Appendix B

SUPREME COURT OF PENNSYLVANIA

July 1, 1964.

415 Pa. 28.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, JOSEPH WERLINICH, RADE MILKOVICH, JOVE ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,
Appellants,

v.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,
Appellees.

EAGEN, Justice.

In this action in equity, the chancellor entered a compulsory nonsuit. No motion to remove or set aside the judgment was entered below, but instead an appeal was filed directly to this Court. The appeal was prematurely taken and must be quashed.

(1) An appeal does not lie from the entry of a judgment of nonsuit but rather from the refusal to take it off. Nazareth F. & M. Co. v. Marshall, 257 Pa. 489, 101 A. 848 (1917); McDonald v. Babcock, 269 Pa. 68, 112 A. 29 (1920). This applies to actions at law as well as in equity. See, Pa. R. C. P. Rule 1512, 12 P. S. Appendix. Under the Act of March 11, 1875, P. L. 6, § 1, 12 P. S. § 645, which is still extant, it is required that a motion to set aside the

judgment of nonsuit be first made to the court *en banc* to give the court an opportunity to reconsider the evidence before the case is removed to the appellate court. The writ of error lies *only* to the refusal of the court to set aside. Haverly v. Mercur, 78 Pa. 257 (1875); Bausbach v. Reiff, 237 Pa. 482, 85 A. 762 (1912); Nazareth F. & M. Co. v. Marshall, *supra;* Dellacasse v. Floyd, 332 Pa. 218, 2 A. 2d 860 (1938).

(2) Plaintiffs-appellants maintain that the authority to enter a compulsory non-suit is strictly statutory and that the chancellor lacked the power to enter such a judgment, after having heard evidence of the defendants. See Jordan v. Sun Life Assur. Co. of Canada, 366 Pa. 495, 77 A. 2d 631 (1951). Assuming the situation thus advanced is factually correct, it would in no manner affect plaintiffs-appellants' obligation to pursue statutorily required procedure in attacking the judgment, or correct the error in prematurely filing this appeal.

A close examination of the record discloses additional fallacy in the above contention. When plaintiffs-appellants' case was finished except for the testimony of a vital witness who was out of the state and unavailable, the court continued the hearing and fixed a subsequent date for the accommodation of this witness. After three such dates for hearing had been scheduled, and two months had passed without this testimony being available, the chancellor in the interests of expediency directed that the defendants proceed without prejudice and reserving the right to apply for a compulsory nonsuit, when the plaintiffs-appellants' testimony was in fact completed. To this, all counsel agreed. It was after the plaintiffs had completed their case in chief that the judgment was entered without consideration being given to the evidence of the defendants.

Under such circumstances, the chancellor clearly had the power to enter the compulsory nonsuit.

Appeal quashed. Costs on the appellants.

BELL, Chief Justice.

I dissent.

Appendix C

IN THE
COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA.

No. 3690 October Term, 1962.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Appellants,

vs.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

OPINION.

(Filed in Appearance Docket March 6, 1964.)

On the South Side in the City of Pittsburgh, there were two separate congregations of the same church, that is,

Appendix C.

the St. Sava Serbian Eastern Orthodox Church and School Parish of Pittsburgh, Pennsylvania, and the St. George Serbian Orthodox Church of Pittsburgh, Pennsylvania. Before 1927, these two congregations had been one and the same church, but the schism occurred in 1927, as a result of which the two churches were formed. The members of each of these congregations had formed separate corporations. These corporations held the title to the real and personal property of the respective churches.

For many years there had been efforts to rejoin these two congregations and in 1961, a unity committee composed of members of both congregations was formed. As a result of the efforts of the unity committee, meetings were held of the members of each church and by a majority vote each congregation approved a merger of the two churches.

Pursuant to the will of the two churches, as expressed in these meetings, application under the non-profit corporation law of the Commonwealth of Pennsylvania was made to this Court to consolidate these two existing corporations. On December 4, 1961, a Decree of Consolidation was made by the Court joining the two churches. The name given to the new corporation was Serbian Eastern Orthodox Church of Pittsburgh, Pennsylvania. No objections were made to this Decree nor was any appeal taken therefrom. By application in October of 1962, to amend the name of the consolidated church its name was changed, by a Decree on October 5, 1962, from the Serbian Eastern Orthodox Church of Pittsburgh, Pennsylvania, to the Holy Trinity Serbian Eastern Orthodox Church-School Congregation of Pittsburgh, Pennsylvania. No objection

was made to the entering of this Decree nor was any appeal taken therefrom.

On September 15, 1962, some of the members of the old St. Sava Congregation filed a Complaint in Equity claiming that the consolidation of the two church corporations was improperly done and asked that the consolidation be declared void, that a trustee be appointed and that an accounting be had. During a lengthy trial upon the matter, there was no proof that there was any impropriety in the manner in which the two corporations had been consolidated. When the Plaintiffs failed to produce any evidence of any irregularity in the consolidation proceedings, they then devoted a great deal of time to try and impeach the written diocesan consent which had been obtained to the amendment of the Articles of Consolidation changing the name of the consolidated church. There is no allegation in the Complaint that there was any defect in the diocesan consent.

What the Plaintiffs were belatedly attempting to do was to try to upset that which the civil law had properly accomplished, that is, the consolidation of these two churches, by the application of canonical regulations of the Serbian Eastern Orthodox Church of the United States of America and Canada. Even if the Plaintiffs' legal position had been properly pleaded (it was in fact not pleaded at all), the canonical regulations while sufficient to control the spiritual matters of a church congregation, cannot control the proceedings of the members which are made, done and confirmed in accordance with the civil law of the Commonwealth of Pennsylvania.

Appendix C.

There being insufficient evidence, after drawing all in-
rences most favorably to the Plaintiffs, presented by the
laintiffs in support of their claim and their evidence
owing clearly that the Plaintiffs were guilty of laches,
e Court for these reasons, granted the Defendants' Mo-
on for a Compulsory Non-Suit at the close of the Plain-
ffs' case.

BY THE COURT,

ROBERT VAN DER VOORT.

Appendix D

IN THE

COURT OF COMMON PLEAS

OF ALLEGHENY COUNTY, PENNSYLVANIA.

No. 3690 October Term, 1962.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, JOSEPH WERLINICH, RADE MILKOVICH, JOVE ADAMOVICH, DELLA ZEES, and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Plaintiffs,

VS.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Defendants.

OPINION.

(Filed December 15, 1964.)

Before: VAN DER VOORT and ALPERN, JJ.

VAN DER VOORT, J.:

George Kukich and others representing a dissident group in the Serbian Eastern Orthodox Church had brought an Action in Equity against the Church complaining that the merger of two branches of the Church was improperly accomplished. When the Plaintiffs failed to establish a *prima facie* case the Chancellor granted the Defendants' Motion for a Compulsory Non-Suit.

Appendix D.

Plaintiffs took an immediate appeal directly to the Supreme Court of Pennsylvania at No. 110 March Term, 1964. The Supreme Court on July 1, 1964, dismissed the appeal for the reason that no appeal lies directly from the granting of a Motion for Compulsory Non-Suit. On July 6, 1964, Plaintiffs filed a Motion "to Remove Compulsory Non-Suit and to Vacate Decree."

On July 9, 1964, upon petition of Defendants a rule was granted to show cause why Plaintiffs' Motion to Remove Compulsory Non-Suit and to Vacate Decree should not be stricken. Defendants filed an Answer to the Petition to Strike-off but there are no issues of fact raised by the answer. The question before the Court *en Banc* is whether or not the Motion to Remove Compulsory Non-Suit and to Vacate Decree is properly filed. The Motion which has been filed is in reality solely one to take off a judgment of Compulsory Non-Suit although labeled in part as a Motion "to Vacate Decree". There is statutory authorization for the entry of a judgment of non-suit and for a motion to set such judgment aside in the Act of March 11, 1957, P. L. 6, § 1, 12 P. S. 645. The statute sets no time in which motions to take off judgment of compulsory non-suit must be made. The Rules of the Common Pleas Court of Allegheny County provide, among other things, as follows:

> "e. Motions to take off judgments of compulsory non-suit shall be filed within four (4) days from entry." (Rule 20 e.)

A similar question arose in North Hampton County and was considered by the Superior Court of Pennsylvania in the case of Edelman v. Moser, 60 Pa. Super. 637 (1915). The Court upheld the Rule of the Court of Common Pleas

of North Hampton County requiring that all motions to set aside a non-suit shall be filed within five (5) days after verdict. In that case the Court said, among other things, at Page 641:

> "As was stated in Harvey v. Pollock, 148 Pa. 534, the application to take off a nonsuit should be made within the proper time. When the plaintiff allowed the nonsuit to stand for the length of time above indicated and upon application to take it off presented no reasons for asking the grace of the court to relieve him from the application of the rule of court, he was not entitled as a matter of right to have his motion granted even if the reasons urged may have had merit in them."

The Plaintiffs take the position that the appeal which they took to the Supreme Court of Pennsylvania acts as a supersedeas and prevents time from running against them with respect to the Motion to take off the Judgment of Compulsory Non-suit. There is a statutory provision as to when appeals operate as supersedeas in the Act of May 19, 1897, P. L. 67, § 12, as amended, 12 P. S. 1149. This statute insofar as it relates to cases of the type of the one at bar provides that an appeal shall operate as a supersedeas only when ordered by the Court below or the Appellate Court or any Judge thereof either by general rule or special order. Based upon statutory provisions alone the appeal did not act as a supersedeas. The case law of Pennsylvania holds that an appeal to the Supreme Court of Pennsylvania improperly taken is a nullity thus this appeal which did not properly lie would have no effect on the time in which to file a Motion to take off the Judgment of Compulsory Non-suit. For these reasons the rule will be made absolute and the Motion to Remove Compulsory Non-

suit and Vacate Decree filed by the Plaintiffs will be stricken.

ORDER.

AND NOW, December 15th, 1964, after argument and consideration of briefs filed, the Rule to Show Cause why Plaintiffs' Motion to Remove Compulsory Non-suit and to Vacate Decree should not be stricken is made absolute and Plaintiffs' Motion to Remove Compulsory Non-suit and to Vacate Decree is stricken from the record.

BY THE COURT,
ROBERT VAN DER VOORT.

Eo die, Exceptions noted to Plaintiffs and bill sealed.

BY THE COURT,
ROBERT VAN DER VOORT. (Seal)

Notice of Appeal to the Supreme Court of the United States

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 94 March Term, 1965.

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Appellants,

vs.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

I. Notice is hereby given that George Kukich, Alexander G. Brnilovich, Stanley Ivosevich, Rade Susnjar, Rade Milkovich, Jovo Adamovich, Della Zees and Dorothy Conway, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Pennsylvania affirming the decree of the Court of Common Pleas of Allegheny County, Pennsylvania, entered in this equity action on September 29, 1965.

Notice of Appeal to the Supreme Court of the United States.

This appeal is taken pursuant to 28 U. S. C. A., par. 1257 (1) and (2) and 28 U. S. C. A., par. 2101 (e); in the alternative, pursuant to 28 U. S. C. A., par. 1257 (3).

II. The Prothonotary will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript of record (a) all docket entries in the Pennsylvania Supreme Court and in the Common Pleas Court; (b) all opinions and decrees of the Supreme Court and of the Common Pleas Court; (c) briefs and record at No. 110 March Term, 1964, herein, made part of the record herein; (d) supplemental briefs and supplemental record filed at the within number and term.

III. The following questions are presented by this appeal:

(a) Should a state court enforce a hierarchical administrative church order requiring opening of a decree merging two local church corporations affiliated with the diocesan hierarchy, members of one of which said corporations successfully appealed from the merger action taken over their objection, to said diocesan hierarchy, but filed no adversary court procedings prior to the merger.

Denied below,

(b) Where a local Pennsylvania church corporation, by the terms of its corporate charter is required to comply with the regulations, rulings and orders of the Serbian Eastern Orthodox Diocese for the United States and Canada, an Illinois corporation, are members who dissent from the majority voting to merge with a similar local

corporation, likewise affiliated, required to oppose the *pro forma* court application for a merger decree before appealing successfully to the church national assembly, so that the delay during such appeal bars their right to open the merger decree?

Affirmed below

(c) May a discretionary state court rule of procedure be invoked for refusing to honor a hierarchical church order to dismember a local church corporation, to re-establish theretofore existing congregations, when none of the members and neither of the local church corporations disaffiliates from the hierarchy?

Affirmed below.

HARRY ALAN SHERMAN,
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Office-Supreme Court, U.S.
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No. 931

IN THE

Supreme Court of the United States

~~NO. 913~~ OCTOBER TERM, 1965

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES and DOROTHY CONWAY, individually and on behalf of all other similarly situated, Appellants

v.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEOGE TRBOVICH, Appellees

On Appeal From the Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

NO. 913 OCTOBER TERM, 1965

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES and DOROTHY CONWAY, individually and on behalf of all other similarly situated, Appellants

v.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEOGE TRBOVICH, Appellees

On Appeal From the Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM

Appellee in the above-entitled case moves to dismiss the appeal on the following grounds:

1. The case in the Lower Court never involved any statute or treaty of the United States, nor the statute of any State, in which a determination was made upon the validity of the statute, as required by Title 28 U. S. Code, Section 1257 (1) and (2) upon which the jurisdiction in this case is alleged to be based.

2. The Federal questions sought to be reveiwed were neither timely, nor properly raised, nor expressly passed upon by the Courts of Pennsylvania.

3. The Appeal does not present a substantial Federal question.

4. The Supreme Court of the United States is being asked to exercise revisory power over State practice and does not have such power.

STATEMENT

Appellants are Plaintiffs in an action in equity, filed September 15, 1962, in the Court of Common Pleas of Allegheny County, Pennsylvania. Their Complaint in Equity sought to set aside certain Articles of Consolidation which were approved ten (10) months earlier, on December 4, 1961. The consolidation rejoined two (2) separate church congregations on the South Side of the City of Pittsburgh — the St. Sava Serbian Eastern Orthodox Church and School Parish of Pittsburgh, Pennsylvania and the St. George Serbian Orthodox Church of Pittsburgh, Pennsylvania. Before 1927, these two (2) church congregations had been one and the same church, but a schism occurred in 1927, as a result of which the two (2) churches were formed. For many years thereafter, there had been efforts to rejoin these two (2) church congregations and in 1961, with the Appellants participation, a unity committee was formed, meetings were held, and a favorable vote for consolidation was had in both local churches. Subsequent to the favorable vote of consolidation, meetings of the consolidated group were held and attended and participated in, by the dissident/appellants, before suit was instituted. At all times the appellants were represented by legal counsel.

After filing and full compliance with the provisions of the Non-Profit Corporation Act of the Commonwealth of Pennsylvania, a Decree of Consolidation was signed on December 4, 1961. No objection was made to this Decree, nor appeal taken therefrom.

In October, 1962, after filing and full compliance with the provisions of the Non-Profit Corporation Act of

the Commonwealth of Pennsylvania, a Decree of Amendment of the Name was signed. The application for Amendment had as an Exhibit, a Diocesan Consent, which consent was clear, unconditional, and unequivocal in its approval of the consolidation, as well as the amendment of the name. No objection was made to this application or decree, nor appeal taken therefrom.

On September 15, 1962, the Appellants, comprising the minority group of one of the local congregations, attempted, by a Complaint in Equity, to have the consolidation declared void, alleging that it was improperly done. During the lengthy trial which ensued, there was no proof of any impropriety. The Chancellor concluded that the plaintiffs had produced no credible evidence of any impropriety in the Articles of Consolidation and, upon motion of the Attorneys for Defendants, granted a compulsory nonsuit of the cause.

Prior to, and during the time of the filing of the Complaint in Equity, the Appellants, the Appellees, the Diocese, and the Bishop were all agreeably identified, judicially, ecclesiatically, canonically, and hierarchically, with the Serbian Orthodox Church — Serbian Patriarchate — the highest and superior authority in the Serbian Orthodox Faith.

Although the dissident/appellants no longer followed, nor accepted the authority of the aforesaid higher and superior authority of the Serbian Orthodox Church, the consolidated group, still, as in the past, continues to follow and accept the authority of the aforesaid hierarchical and superior authority.

After completion of the Plaintiff's case in chief, a motion for compulsory non-suit was granted by the trial

judge of the Court of Common Pleas of Allegheny County, Pennsylvania. A direct appeal from the "mere entry of the compulsory non-suit" was made by the Appellants to the Supreme Court of the Commonwealth of Pennsylvania at No. 110 March Term, 1964, reported at 415 Pa. 28, and was quashed as being premature. Appeal in such cases within the Commonwealth of Pennsylvania, lies only from the "Refusal to take off the compulsory non-suit." Thereafter, Appellants attempted to comply with the Rules of Civil Procedure, and filed a motion to remove the compulsory non-suit. A motion to strike their motion was sustained by the court en banc of the Court of Common Pleas of Allegheny County, Pennsylvania. This interpretation of the Rules, by the court en banc, was subsequently affirmed by the Supreme Court of Pennsylvania.

At no time in the Court of Common Pleas of Allegheny County was there alleged the violation of any constitutional guarantee of the Constitution of the United States. Further, no statute of the United States was ever introduced, construed, nor passed upon by the Supreme Court of Pennsylvania, or the Court of Common Pleas of Allegheny County. No statute of the Commonwealth of Pennsylvania was construed as to its constitutionality either by the Supreme Court of Pennsylvania or the Court of Common Pleas of Allegheny County. Appellants never raised any constitutional issue in the Court of Common Pleas of Allegheny County. Further, contrary to their statements in the Jurisdictional Statement, Appellants never raised any constitutional question before the Supreme Court of Pennsylvania.

Questions Presented.

Both decisions of the Supreme Court of Pennsylvania were decisions relating to the practice in the State Courts. The first decision ruled that Appellants' appeal was premature since they made no motion to remove the nonsuit in the Court below as required by Pennsylvania statute. The second decision in the Pennsylvania Supreme Court ruled, by affirming the Lower Court, that Appellants had failed to present a motion to remove the compulsory nonsuit in time.

QUESTIONS PRESENTED

1. Have the jurisdictional requirements of Title 28, United States Code, Sections 1257 (1) and 1257 (2) been met by this case?

2. May Federal questions be introduced into the case for the first time before the Supreme Court of the United States?

3. Is a substantial Federal question presented?

4. Would the consideration of the present appeal require the Supreme Court of the United States to exercise revisionary power over State Court practice?

ARGUMENT

1. Failure to Comply With Title 28, U. S. Code, Section 1257 (1) and 1257 (2).

Section 1257 (1) of Title 28 provides that review by the Supreme Court may be had "by appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity." No statute of the United States has been questioned anywhere in the record of the entire proceedings below. A diligent search of the entire record will show that not one United States statute has been cited, questioned, or considered in any manner. The jurisdiction of the Supreme Court of the United States cannot be attached under Section 1257 (1).

Section 1257 (2) of Title 28 permits review by the Supreme Court "by appeal, where is drawn in question the validity of a statute of any State on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." Here again, no statute of the Commonwealth of Pennsylvania has been charged with being unconstitutional. The Appellants have failed to point out any statute of the Commonwealth of Pennsylvania which abridges the constitutional guarantees which they say have been thwarted.

In the Statement of Jurisdiction, the Appellants cite several cases which they allege sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal. Appellees have reviewed the cases there cited and submit that each of these cases involves either a statute of a State or a statute of the United States.

Since the present case does not involve a statute of either the Commonwealth of Pennsylvania or the United States of America, Appellees move that the appeal be dismissed.

2. The Federal Questions Sought to Be Reviewed Were Not Raised Below.

Prior to the final judgment of the Supreme Court of Pennsylvania in this case, Appellants did not raise any Federal constitutional questions. The Supreme Court of the United States has consistently ruled that before its jurisdiction can be invoked on appeal from a State Court, it must appear that the Federal questions involved were raised in the State Courts at the proper time: *Hulbert v. Chicago,* 26 S. Ct. 617, 202 U. S. 275, 50 L. Ed. 1026 (1906); *Brown v. Commonwealth of Massachusetts,* 12 S. Ct. 757, 759, 144 U. S. 573, 580, 36 L. Ed. 546 (1892); *John v. Paullin,* 34 S. Ct. 178, 231 U. S. 583, 58 L. Ed. 381 (1914). The law of Pennsylvania requires that constitutional questions be raised in the Trial Court and, if not, they will not be considered on appeal. *Archbishop O'Hara's appeal,* 389 Pa. 35, 46, 131 A 2d 587 (1957); *Montgomery County Bar Association v. Ranalducci,* 329 Pa. 296, 298, 197 A 924 (1938); *Clark v. Rutecki,* 408 Pa. 25, 182 A 2d 687 (1962).

3. The Appeal Presents No Substantial Federal Question.

Appellants submit that Federal constitutional questions may not be presented to this Honorable Court unless the precise questions have been placed in issue before the State Courts. This basic procedural requirement is completely absent in this case. In all its appellate stages, this case has involved the interpretation of the statutes and rules of practice in the Courts of the Commonwealth of Pennsylvania; primarily, the timeliness and necessity of filing motions to remove a compulsory nonsuit. Appellants' Jurisdictional Statement confirms the fact that both decisions of the Supreme Court of Pennsylvania were on the requirements for motions to remove compulsory nonsuits. (Pages 6 and 7.)

4. The Appeal Is an Attempt to Get the Supreme Court of the United States to Exercise Revisory Power Over State Courts.

Since the appeal is from the Supreme Court of Pennsylvania's rulings that a motion to take off a compulsory nonsuit is necessary before an appeal can be filed to the Supreme Court of Pennsylvania, and that a motion to take off a compulsory nonsuit not filed within the time required by the Rules of Court of the Court of Common Pleas will not be considered, the Appellants attempt to have the Supreme Court of the United States dictate the procedural rules and statutes of the Supreme Court of Pennsylvania. The Supreme Court of the United States has repeatedly held that it does not have revisory power over State practice; *Milkwagon Drivers Union of Chi-*

cago, Local 753 v. Meadowmoor Dairies, Illinois, 61 S. Ct. 552, 312 U. S. 287, 85 L. Ed. 836 (1941), rehearing denied 61 S. Ct. 803, 312 U. S. 715, 85 L. Ed. 1145; *First National Bank of Guthrie Center v. Anderson,* 46 S. Ct. 135, 269 U. S. 341, 70 L. Ed. 295 (1926). The decision of a State Court resting on grounds of State procedure does not present a Federal question. *French v. Hopkins,* 8 S. Ct. 589, 124 U. S. 524, 31 L. Ed. 536.

In the present case, counsel for the Appellants failed to properly perfect his grounds for appeal by not raising questions in the Trial Court and in the State Appellate Court which he now claims are constitutional questions. A litigant's misapprehension of steps which its best interests require during trial may be an appealing ground for plea to the hearing tribunals discretion for another chance, but it is not ground for interference by the United States Supreme Court as a denial of a constitutional right. *Market Street Railway Co. v. Railroad Commission of the State of California,* 65 S. Ct. 770, 324 U. S. 548, 89 L. Ed. 1171 (1945), rehearing denied 65 S. Ct. 1020, 324 U. S. 890, 89 L. Ed. 1438.

Since the Supreme Court may not review and revise a State Court's decision on its own practice and procedure, it is submitted that the Supreme Court should affirm the decision below.

CONCLUSION

For all of the foregoing reasons, Appellee moves that this appeal be dismissed, or in the alternative, that the decision of the Supreme Court of Pennsylvania be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 931

October Term, 1965

GEORGE KUKICH, ALEXANDER G. BRNILOVICH, STANLEY IVOSEVICH, RADE SUSNJAR, RADE MILKOVICH, JOVO ADAMOVICH, DELLA ZEES and DOROTHY CONWAY, individually and on behalf of all others similarly situated,

Appellants,

vs.

SERBIAN EASTERN ORTHODOX CHURCH OF PITTSBURGH, NICHOLAS R. STONE, WALTER R. RANICH, PETER M. NOZINICH, GEORGE ERDEL, LARRY TRBOVICH, JR., ROBERT R. STONE, JOHN VERLINICH, MILAN LUKETICH, SAM VIGNOVICH and GEORGE TRBOVICH,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

APPELLANTS' REPLY BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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IN THE

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No. 931

October Term, 1965

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

APPELLANTS' REPLY BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

Appellees have in their motion to dismiss so dogmatically asserted that the Federal questions upon which the appeal is based are being raised therein for the first time, that it is deemed necessary to reply in the interest of truth.

Mere reference to the printed Supplemental Record of Appellants at No. 94 March Term, 1965 page 1c shows

unquestionably that the Federal questions were actually presented fully on July 6, 1964, to the Common Pleas Court, and, upon appeal, to the Pennsylvania Supreme Court. The fact that these questions were ignored below as have been the Federal constitutional and judicial mandates, is the very basis of the appeal. The questions were put, but the answers withheld, leaving the overtone of Judge Van der Voort's decision of March 6, 1964, as the law of the case, (Printed Record, Penna. Supreme Court appeal No. 110 March Term, 1964, at p. 364a):

> "* * * the canonical regulations while sufficient to control the spiritual matters of a church congregation, cannot control the proceedings of the members which are made, done and confirmed in accordance with the civil law of the Commonwealth of Pennsylvania."

It appears that while "the law" in Pennsylvania will give lip service to the Federal principle of separation of church and state; mutely it refuses recognition thereof.

"*Non omne licitum honestum*":

If in truth a church hierarchy has autonomous power over its membership; and if such power is to be honored in our civil courts; then review and reversal of the Pennsylvania Supreme Court and Common Pleas Court are indeed called for.

Respectfully submitted,

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END